

UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO

In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,
as representative of
THE COMMONWEALTH OF PUERTO RICO, *et al.*,
Debtors.¹

PROMESA
Title III

No. 17 BK 3283-LTS
(Jointly Administered)

**JOINT STATUS REPORT OF MOVANT AMBAC ASSURANCE CORPORATION AND
RESPONDENTS THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR
PUERTO RICO, AS REPRESENTATIVE OF THE COMMONWEALTH OF PUERTO
RICO, AND THE PUERTO RICO FISCAL AGENCY AND FINANCIAL ADVISORY
AUTHORITY WITH RESPECT TO THE RULE 2004 MOTIONS**

¹ The Debtors in these Title III Cases, along with each Debtor's respective Title III case number and the last four (4) digits of each Debtor's federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (Bankruptcy Case No. 17 BK 3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation ("COFINA") (Bankruptcy Case No. 17 BK 3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority ("HTA") (Bankruptcy Case No. 17 BK 3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico ("ERS") (Bankruptcy Case No. 17 BK 3566-LTS) (Last Four Digits of Federal Tax ID: 9686); (v) Puerto Rico Electric Power Authority ("PREPA") (Bankruptcy Case No. 17 BK 4780-LTS) (Last Four Digits of Federal Tax ID: 3747); and (vi) Puerto Rico Public Buildings Authority ("PBA") (Bankruptcy Case No. 19-BK-5523-LTS) (Last Four Digits of Federal Tax ID: 3801).

To the Honorable United States Magistrate Judge Judith Gail Dein:

Movant Ambac Assurance Corporation (“Ambac”) and Respondents the Financial Oversight and Management Board for Puerto Rico (the “Oversight Board”), as representative of the Commonwealth of Puerto Rico (the “Commonwealth” or “Debtor”) pursuant to section 315(b) of the Puerto Rico Oversight, Management, and Economic Stability Act (“PROMESA”), and the Puerto Rico Fiscal Agency and Financial Advisory Authority (“AAFAF,” and together with the Oversight Board, the “Government Parties”),² respectfully submit this Updated Joint Status Report in response to the Court orders dated January 23, 2020 (Dkt. No. 10332), February 6, 2020 (Dkt. No. 10727), and March 23, 2020 (Dkt. No. 12492).

I. STATUS UPDATE REGARDING AMBAC’S RULE 2004 REQUESTS

A. Procedural Background

1. On October 28, 2019, Ambac filed *Ambac Assurance Corporation’s Motion for Entry of Order Authorizing Discovery Under Bankruptcy Rule 2004 Concerning Commonwealth Assets* (Dkt. No. 9022) (the “Assets Motion”), and *Ambac Assurance Corporation’s Motion for Entry of Order Authorizing Discovery Under Bankruptcy Rule 2004 Concerning Commonwealth Cash Restriction Analysis* (Dkt. No. 9023) (the “Cash Motion,” and together with the Assets Motion, the “Rule 2004 Motions”).

2. On November 8, 2019, the Government Parties filed the *Urgent Motion of Financial Oversight and Management Board for Puerto Rico and Puerto Rico Fiscal Agency and Financial Advisory Authority to Strike (A) Ambac Assurance Corporation’s Motion for Entry of Order Authorizing Discovery Under Bankruptcy Rule 2004 Concerning Commonwealth Assets [ECF No. 9022] and (B) Ambac Assurance Corporation’s Motion for Entry of Order Authorizing*

² Ambac and the Government Parties are collectively referred to as the “Parties.”

Discovery Under Bankruptcy Rule 2004 Concerning Commonwealth Cash Restriction Analysis [ECF No. 9023] and for Sanctions (Dkt. No. 9131) (the “Motion to Strike”).

3. On January 23, 2020, Judge Swain issued a memorandum order denying the Motion to Strike (Dkt. No. 10332) (the “Memorandum Order”). The Memorandum Order directed the parties to meet and confer by February 3, 2020 concerning the scope and mechanics of discovery responsive to the Rule 2004 Motions. *Id.* at 9.

4. The parties previously filed status reports on February 12, 2020, February 26, 2020, and March 20, 2020. Most recently, on March 20, 2020, the Parties filed the *Updated Joint Status Report of Movant Ambac Assurance Corporation and Respondents the Financial Oversight and Management Board for Puerto Rico, as Representative of the Commonwealth of Puerto Rico, and the Puerto Rico Fiscal Agency and Financial Advisory Authority with Respect to the Rule 2004 Motions* (Dkt. No. 12484) (the “March 20 Joint Status Report”) detailing their March 16, 2020 telephonic conference, related communications, and agreed parameters for the resolution of disputed aspects of the Rule 2004 Motions. The Parties agreed in the March 20 Joint Status Report to have another meet-and-confer and to file an Updated Joint Status Report on April 10, 2020.

B. The Parties’ Progress Since the Previous Update to the Court

5. On March 20, 2020, the Oversight Board began producing non-privileged factual source materials and raw data underlying the report prepared by Duff & Phelps, including the “Master Database,” as defined in the Duff & Phelps report, in response to Ambac’s Prioritized Cash Requests 1, 2, and 4. The Oversight Board made additional productions of such materials on March 27 and April 3, 2020. Ambac’s review and analysis of the documents produced by the Oversight Board is ongoing. The Government Parties informed Ambac that some of the documents in the April 3, 2020 production redacted account numbers of Commonwealth bank accounts, and that many of the remaining documents relating to the Duff & Phelps report also have

such redactions. Ambac agreed to review these documents and will inform the Government Parties if they would like these redactions to be removed.

6. On April 7, 2020, the Oversight Board sent Ambac a letter via email (attached as Exhibit B) (the “April 7 Letter”) in response to Ambac’s letter dated March 20, 2020 (attached as Exhibit A). The April 7 Letter, *inter alia*, provided an update on the Oversight Board’s production efforts with respect to Ambac’s Prioritized Cash Requests 1, 2, and 4, and requested a list of topics for which Ambac seeks Rule 30(b)(6) deposition testimony. On April 8, 2020, Ambac sent the Government Parties a letter via email (attached as Exhibit C) following up on the Oversight Board’s production of documents in response to Prioritized Cash Requests 1 and 2. In the interest of advancing the Parties’ negotiations regarding the propriety and scope of Rule 30(b)(6) depositions, Ambac also provided a preliminary list of deposition topics.

7. On April 9, 2020, the Parties met and conferred by telephone. The Government Parties advised that, as stated in their April 7 Letter, they will re-produce factual source materials and raw data underlying the October 2, 2019 Presentations³ that was previously uploaded to the IntraLinks Data Room, and produce additional factual source materials and raw data for the unrestricted and restricted accounts held by the Title III debtors that fell within the scope of the Oversight Board’s cash analysis (Prioritized Cash Requests 1 and 2). The Government Parties also reiterated the objections stated in their April 7 Letter, with which Ambac disagrees, that Prioritized Cash Request 3 is overbroad, unduly burdensome, and inappropriate insofar as it seeks discovery into the Oversight Board’s certification determinations. The Parties continue to meet and confer in good faith regarding Prioritized Cash Request 3 and have not yet reached an impasse.

³ “October 2, 2019 Presentations” refers to the “Summary of Cash Restriction Analysis” presentation, dated October 2, 2019, and the “Bank Account Analysis: Status Update – June 30, 2019 Balances” presentation, dated as of October 2, 2019.

8. The Parties discussed several other requests. The Government Parties advised that they are still in the process of determining what additional, reasonably accessible materials exist that they may produce in response to Prioritized Asset Requests 1, 3, and 4. The Government Parties advised that their efforts to locate additional responsive materials will be delayed in light of Executive Orders issued in response to the COVID-19 pandemic, which have limited the relevant Government personnel's access to Government files.

9. The Government Parties advised that they intend to make a production of materials they have collected that are responsive to Prioritized Asset Requests 2 and 3 promptly after entry of a protective order. The Parties have reached an agreement in principle on a proposed protective order and expect to submit it to the Court for approval next week, subject to obtaining final sign off from other creditors that the Parties have voluntarily agreed will receive copies of any documents produced to Ambac.

10. Finally, the Parties discussed the preliminary list of Rule 30(b)(6) deposition topics Ambac provided on April 8. The Government Parties agreed to confer internally regarding their position on the preliminary deposition topics, and the Parties agreed to continue to meet-and-confer regarding the propriety and scope of any Rule 30(b)(6) depositions.

11. The Parties have agreed to have another meet-and-confer no later than May 15, 2020, to further discuss the outstanding issues in the hopes of narrowing or resolving areas of dispute.

12. The Parties would propose to submit an updated status report to the Court on May 20, 2020.

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Dated: April 10, 2020
San Juan, Puerto Rico

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CERTIFICATE OF SERVICE

I hereby certify that on this same date a true and exact copy of this notice was filed with the Clerk of Court using the CM/ECF system, which will notify a copy to counsel of record.

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